

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re FIRSTENERGY CORP. SECURITIES
LITIGATION

) No. 2:20-cv-03785-ALM-KAJ
)
) CLASS ACTION

This Document Relates To:

ALL ACTIONS

)
) Judge Algenon L. Marbley
) Magistrate Judge Kimberly A. Jolson
)
)

MFS Series Trust I, et al.,

Plaintiffs,

vs.

FirstEnergy Corp., et al.,

Defendants.

) Case No. 2:21-cv-05839-ALM-KAJ
)
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)
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)
)

Brighthouse Funds Trust II – MFS Value
Portfolio, et al.,

Plaintiffs,

vs.

FirstEnergy Corp., et al.,

Defendants.

) Case No. 2:22-cv-00865-ALM-KAJ
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**FIRSTENERGY’S OBJECTIONS TO THE SPECIAL MASTER’S ORDER DENYING
LEAVE TO FILE SUPPLEMENTAL AUTHORITY AND RECORD CITATIONS**

On May 2, 2024 (ECF No. 651 (“Order”)), the Special Master denied FirstEnergy leave to file supplemental authority and record citations in further support of its objections to the Special Master’s order granting discovery into the internal investigations conducted by counsel for FirstEnergy and its independent directors (ECF No. 607 (“Internal Investigation Objections”)). Although the Court issued its decision on the Internal Investigation Objections on May 6, 2024 (ECF No. 653), because FirstEnergy is seeking appellate review of that decision, FirstEnergy submits these objections to the Order to preserve a complete record for appeal.

FirstEnergy respectfully objects to the Order on the following grounds:

(i) the Special Master incorrectly held that supplemental authority must reflect “a change in the relevant law” (Order at PageID 14239), but even the authority relied on by the Special Master recognized that a change in law is merely an example of “where a party may submit supplemental authority” (*id.*, citing *Akron Bd. of Educ. v. Wallace*, 2016 WL 11812147, at *2 (N.D. Ohio Sept. 6, 2016));

(ii) the Special Master rejected the proposed supplemental authority as “redundant” and “irrelevant” (Order at PageID 14240), but the Special Master’s order granting discovery into FirstEnergy’s internal investigations “turn[ed] on” his determination that “numerous district courts nationwide” supported his conclusion that Mr. O’Neil’s declaration did not comply with 28 U.S.C. § 1746 (Order on Mot. to Compel, ECF No. 571 at PageID 12381), which renders additional authority relevant;

(iii) the Special Master erred in concluding that the Federal Rules of Civil Procedure bar supplementation of pending objections with supplemental authority, and the cases relied on by the Special Master involved circumstances where, unlike here, the supplementing party failed to move for leave to submit the authority (Order at PageID 14239);

(iv) the Special Master erroneously held that a notice of supplemental authority cannot explain the authority's relevance (*id.* at PageID 14240), notwithstanding that Chief Judge Marbley, like other judges in this District, has repeatedly accepted Notices of Supplemental Authority from Plaintiffs and Defendants here that explained the authority's relevance (*see, e.g.*, ECF Nos. 352, 424); and

(v) in excluding record citations showing that this Court has accepted numerous declarations from Plaintiffs that did not comply with the Special Master's interpretation of 28 U.S.C. § 1746, the Special Master ignored that record citations may be accepted "even without showing good cause if [they do] not result in prejudice toward the opposing party," which Plaintiffs and Defendants Jones and Dowling conceded by electing not to oppose FirstEnergy's motion for leave to present the record citations to the Court. *Tera II, LLC v. Rice Drilling D, LLC*, 2023 WL 2664415, at *5 (S.D. Ohio Mar. 28, 2023).

Dated: May 22, 2024

Respectfully submitted,

/s/ Paul J. Schumacher

Paul J. Schumacher, Trial Attorney (0014370)
DICKIE, MCCAMEY & CHILCOTE, P.C.
600 Superior Avenue East
Fifth Third Center, Suite 2330
Cleveland, Ohio 44114
Telephone: (216) 685-1827
pschumacher@dmclaw.com

Richard J. Silk, Jr. (0074111)
DICKIE, MCCAMEY & CHILCOTE, P.C.
10 W. Broad Street, Suite 1950
Columbus, Ohio 43215
Telephone: (614) 258-6000
rsilk@dmclaw.com

Robert J. Giuffra, Jr. (*pro hac vice*)
Sharon L. Nelles (*pro hac vice*)

David M.J. Rein (*pro hac vice*)
Beth D. Newton (*pro hac vice*)
Nicholas F. Menillo (*pro hac vice*)
Hilary M. Williams (*pro hac vice*)
Tasha N. Thompson (*pro hac vice*)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004
Telephone: (212) 558-4000

Kamil R. Shields (*pro hac vice*)
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W.
Suite 700
Washington, D.C. 20006
Telephone: (202) 956-7040

Counsel for Defendant FirstEnergy Corp.

CERTIFICATE OF SERVICE

I certify that the foregoing was filed electronically on May 22, 2024. Notice of this filing will be sent to all electronically registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Paul J. Schumacher
Paul J. Schumacher (0014370)

Counsel for Defendant FirstEnergy Corp.